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ANUAR ABU BAKAR v. SAMSURI BOOYMAN

COURT OF APPEAL, PUTRAJAYA
ABANG ISKANDAR JCA
NALLINI PATHMANATHAN JCA
ZAMANI A RAHIM JCA

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[APPEAL NO: B-02(NCVC)(W)-1926-11-2014]
25 JULY 2016

CONTRACT: *Agreement – Joint venture agreement – Validity – Whether defendant as administrator and legal representative of estate has capacity to enter into agreement – Whether consent of other beneficiaries of estate obtained – Plaintiff complied with all terms stipulated in agreement – Whether defendant benefited from efforts made by plaintiff – Doctrine of estoppel – Whether applicable – Whether defendant obligated to transfer titles to plaintiff – Whether parties bound by terms of agreement – Contracts Act 1950, s. 38*

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The plaintiff and the defendant entered into a joint venture agreement to develop a piece of land ('the land'). Among the terms agreed upon by both parties were, *inter alia*, that (i) the plaintiff to apply for the change of the conditions of land use and to do the infrastructure works; (ii) since the land belonged to the defendant's mother ('deceased') the plaintiff agreed to take

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care of all matters involving the obtaining of the letter of administration and for the *faraid* process involving the land at the plaintiff's expenses; (iii) upon obtaining a separate title, the plaintiff and the defendant would have equal 50% share over the land (consisting of ten lots of land); and (iv) the plaintiff's share to be transferred to him within one month from the date the separate

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title was obtained. The plaintiff contended that he had successfully complied with all the terms stipulated in the joint venture agreement. However, the defendant had refused or failed to transfer the plaintiff's share in the land into the plaintiff's name. The plaintiff thus claimed that the defendant had breached the joint venture agreement. Therefore, the plaintiff sought a

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declaration that the defendant was a trustee of the ten lots in the land held on behalf of the plaintiff and for the defendant to transfer the ten lots to the plaintiff. Alternatively, the plaintiff sought compensation. The defendant in the statement of defence stated, *inter alia*, that the joint venture agreement was signed before the letter of administration was obtained. It was also his defence that the defendant's family members and other beneficiaries had

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never authorised the defendant to enter into the joint venture agreement. The High Court Judge ('HCJ') ordered the defendant to pay the plaintiff certain sums as compensation. Dissatisfied with the decision, the plaintiff appealed. The main issue that arose was whether the joint venture agreement was valid and therefore binding on the parties.

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Held (allowing appeal)
Per Abang Iskandar JCA delivering the judgment of the court:

(1) The defendant was, at the material time of signing of the joint venture agreement, the administrator of the deceased's estate. As the legal representative of the said estate, the defendant was competent to enter into the joint venture agreement with the plaintiff and was bound by the terms contained in the said joint venture agreement. During cross-examination, the defendant had answered to a question posed to him that the other beneficiaries had agreed to him entering into the said joint venture agreement. Thus, he had their consent. Clearly, the plaintiff had made out the prayer as contained in cl. 13(iv) of his statement of claim, which was to seek a declaration that the defendant was a trustee for the plaintiff in relation to the ten lots and that the defendant be ordered to transfer the said ten lots into the name of the plaintiff. (paras 20-22)

(2) As such, the joint venture agreement was valid and was binding on the contracting parties. The joint venture agreement contained certain terms that would require the defendant to do certain things in favour of the plaintiff. Among them was a term that obligated the defendant to transfer ten titles of the newly sub-divided Lot 1971 to the plaintiff. There was no dispute on this term *per se*. Under s. 38 of the Contracts Act 1950, a party to a contract must, unless excused under the Contracts Act or any other law, be bound by the terms of the contract so entered between them. (para 24)

(3) The plaintiff had indeed performed his part of the bargain as contained in the joint venture agreement and the defendant had benefited from the efforts undertaken by the plaintiff on behalf of the defendant. The defendant was therefore estopped from denying the plaintiff what had been agreed between them. The doctrine of estoppel operated against him. The doctrine of estoppel also operated against him such that he could not be heard now to say that he had no capacity to enter into the joint venture agreement. (paras 25 & 27)

(4) The HCJ had misread the statement of claim thereby misdirecting herself as to the true nature of the prayers that were being sought for by the plaintiff. She had dismissed the plaintiff's claim based on a mistaken appreciation of the pleadings and prayers of the plaintiff. She had ruled out a prayer, *to wit*, specific performance, a prayer that was alien to the plaintiff's statement of claim. On that ground alone, being a serious misdirection, her decision was liable to be set aside. Further, the defence of the defendant was an afterthought, devised as it were to deny the plaintiff what was rightfully his, as had been agreed between them as contained in the joint venture agreement. The HCJ had erred in her

A decision. It therefore required this court's intervention in order that justice was served in the circumstances of this case. The HCJ's orders were thus set aside. (paras 23, 28 & 30)

***Bahasa Malaysia** Headnotes*

B Plaintif dan defendan memeterai satu perjanjian usaha sama untuk membangunkan sebidang tanah ('tanah'). Syarat-syarat yang dipersetujui oleh kedua-dua pihak adalah, antara lain, bahawa (i) plaintif perlu memohon penukaran penggunaan keadaan tanah dan melakukan kerja-kerja infrastruktur; (ii) oleh kerana tanah itu dimiliki oleh ibu kepada defendan C ('si mati'), plaintif bersetuju untuk menjaga semua perkara yang melibatkan surat pentadbiran dan proses *faraid* berkenaan tanah tersebut atas perbelanjaan plaintif; (iii) setelah mendapat hakmilik berasingan bagi tanah, plaintif dan defendan akan memperolehi 50% bahagian sama atas tanah (yang mengandungi sepuluh lot tanah) dan (iv) bahagian plaintif akan dipindahkan kepadanya dalam tempoh satu bulan daripada tarikh hakmilik D berasingan diperolehi. Plaintif menghujahkan bahawa dia berjaya mematuhi segala syarat-syarat yang ditetapkan dalam perjanjian usaha sama. Walau bagaimanapun, defendan enggan atau gagal memindah milik bahagian plaintif dalam tanah itu ke atas nama plaintif. Plaintif mendakwa bahawa defendan telah melanggar perjanjian usaha sama tersebut. Oleh itu, plaintif memohon E deklarasi bahawa defendan adalah seorang pemegang amanah bagi sepuluh lot dalam tanah yang dipegangnya bagi pihak plaintif. Sebagai alternatif, plaintif memohon ganti rugi. Defendan dalam pernyataan pembelaannya menyatakan, antara lain, bahawa perjanjian usaha sama telah ditandatangani sebelum surat pentadbiran diperolehi. Pembelaannya adalah bahawa F keluarga defendan dan waris yang lain tidak memberikan kuasa kepada defendan untuk memasuki perjanjian usaha sama. Hakim Mahkamah Tinggi ('HMT') memerintahkan supaya defendan membayar plaintif jumlah tertentu sebagai ganti rugi. Tidak berpuas hati dengan keputusan tersebut, plaintif merayu. Isu utama yang dibangkitkan adalah sama ada perjanjian usaha sama G tersebut sah dan mengikat pihak-pihak.

Diputuskan (membenarkan rayuan)
Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:

(1) Defendan pada waktu material menandatangani perjanjian usaha sama adalah pentadbir harta pusaka si mati. Sebagai wakil undang-undang H bagi harta pusaka tersebut, defendan berwibawa untuk memasuki perjanjian usaha sama dengan plaintif dan terikat dengan syarat-syarat yang terkandung dalam perjanjian usaha sama tersebut. Tambahan, semasa pemeriksa balas, defendan telah menjawab soalan yang diberikan kepadanya bahawa waris-waris yang lain telah bersetuju supaya I defendan memasuki perjanjian usaha sama tersebut. Oleh itu, dia telah

mendapatkan kebenaran mereka. Dengan jelas, plaintif telah membuktikan permohonannya seperti yang terkandung dalam kl. 13(iv) pernyataan tuntutannya, iaitu untuk menuntut deklarasi bahawa defendan adalah pemegang amanah untuk plaintif berhubungan dengan sepuluh lot itu dan defendan diperintahkan supaya memindahkan sepuluh lot tersebut ke atas nama plaintif.

(2) Oleh itu, perjanjian usaha sama adalah sah dan mengikat pihak-pihak yang berkontrak. Perjanjian usaha sama itu mengandungi beberapa syarat yang memerlukan defendan melakukan beberapa perkara untuk pihak plaintif. Salah satunya adalah syarat yang mewajibkan defendan memindahkan sepuluh lot dari Lot 1971 yang telah dipecah bahagi kepada plaintif. Tiada pertikaian berkenaan syarat ini. Di bawah s. 38 Akta Kontrak 1950, pihak kepada kontrak harus, kecuali jika dikecualikan di bawah Akta Kontrak atau undang-undang lain, diikat dengan syarat-syarat kontrak yang dimasuki oleh mereka.

(3) Plaintif telah melaksanakan kewajipannya seperti yang terkandung dalam perjanjian usaha sama dan defendan telah mendapat manfaat daripada usaha yang telah diambil oleh plaintif bagi pihak defendan. Oleh itu, defendan diestop daripada menafikan plaintif apa yang telah dipersetujui antara mereka. Doktrin estoppel bertindak bertentangan dengannya. Doktrin estoppel juga bertindak bertentangannya di mana defendan tidak boleh sekarang menyatakan bahawa dia tidak mempunyai kapasiti untuk memasuki perjanjian usaha sama tersebut.

(4) HMT khilaf apabila membaca pernyataan tuntutan dan tersalah arah dirinya berkenaan sifat tuntutan plaintif. Beliau menolak tuntutan plaintif berdasarkan kesilapan penghayatan pliding dan tuntutan plaintif. Beliau menolak tuntutan pelaksanaan spesifik, tuntutan yang asing kepada penyataan tuntutan plaintif. Atas alasan itu sahaja, iaitu satu salah arah yang amat serius, keputusannya wajar diketepikan. Tambahan, pembelaan defendan adalah yang difikirkan kemudian, direka untuk menafikan plaintif haknya, yang dipersetujui antara mereka seperti yang terkandung dalam perjanjian usaha sama. HMT khilaf dalam keputusannya. Oleh itu, ia memerlukan campur tangan mahkamah ini supaya keadilan disampaikan dalam keadaan kes ini. Perintah HMT dengan itu diketepikan.

Case(s) referred to:

Cheng Keng Hong v. Government of the Federation of Malaya [1965] 1 LNS 22 HC ***(refd)***
Ganam Rajamany v. Somoo Sinniah [1984] 2 CLJ 268; [1984] 1 CLJ (Rep) 123 FC ***(dist)***
Kersah La'uisn v. Sikin Menan [1964] 1 LNS 57 HC ***(refd)***
Silimuthu v. Amalu & Anor [1981] 1 LNS 193 HC ***(refd)***

Legislation referred to:
Contracts Act 1950, s. 38

For the appellant - Kaliyana Sundaram & Shanker Kaliyana Sundaram; M/s SK Sundaram & Partners
For the respondent - Mohd Iqbal Zainal Abidin; M/s Megat Iqbal & Co

[Editor's note: Appeal from High Court, Shah Alam; Civil Suit No. 22NCVC-621-10-2013 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Abang Iskandar JCA:

Brief Facts Of The Case

[1] It is the plaintiff's pleaded case that on 3 January 2006, Anuar bin Abu Bakar ("the plaintiff") and Samsuri bin Booyman ("the defendant") entered into a "joint venture agreement" to develop a piece of land known as Lot 1971, AM 193, Mukim Labu, Sepang District, Selangor ("the land").

[2] Among the terms agreed upon by both parties have been that:

(a) the plaintiff to apply for the change of the conditions of land use from "Agricultural" to "Building and Business" in addition to do the infrastructure works;

(b) since the land belonged to the defendant's mother, Rokiah binti Karia ("the deceased"), the plaintiff agreed to take care all matters involving the obtaining of the letter of administration and for the *faraid* process involving the land at the plaintiff's expenses;

(c) upon obtaining a separate title, the plaintiff and the defendant will have equal 50% share over the land (consisting of ten lots in the land);

(d) the plaintiff's share to be transferred to him within one month from the date the separate title is obtained;

(e) as consideration, the plaintiff will pay to the defendant the sum of RM1,000.

[3] The plaintiff contended that he had successfully complied with all the terms stipulated in the joint venture agreement, including obtaining a court order dated 22 August 2007 which, *inter alia*, ordered that the land be transferred to the defendant. However the defendant had refused or failed to transfer the plaintiff's share in the land into the plaintiff's name. He had also refused to give to the plaintiff the original title of the land for the purpose of the said transfer.

[4] The plaintiff therefore claimed that the defendant had breached the joint venture agreement. He had also claimed that the defendant had breached the trust as the joint venture agreement which he had entered 'on trust' that the defendant would fulfil his obligations under the joint venture agreement.

[5] Therefore in this suit, the plaintiff sought for a declaration that the defendant was a trustee of the ten lots in the land held on behalf of the plaintiff and for the defendant to transfer the ten lots to the plaintiff within three months from the date of the court order. Alternatively, the plaintiff sought for compensation of RM562,197.50 or RM926,215 whichever applicable with interest.

[6] The defendant in the statement of defence stated, *inter alia*, that the joint venture agreement was signed before the letter of administration was obtained. It was also his defence that the defendant's family members and other beneficiaries had never authorised the defendant to enter into the joint venture agreement. The defendant contended that there was no consideration in the joint venture agreement. The reason for payment of RM1,000 was also vague. The defendant also contended that the joint venture agreement was not valid because it was contrary to the law of *faraid*, and syariah law in the distribution of estate.

[7] On 16 October 2014, the learned High Court Judge ("HCJ") ordered the defendant to pay the plaintiff the followings:

(i) the sum of RM48,118.52 for the cost and expenses spent by the plaintiff;

(ii) the sum of RM100,000 as a compensation, (iii) 5% interest upon (i) and (ii); and

(iii) costs of RM20,000.

[8] Dissatisfied with the decision, the plaintiff had since appealed against it to the Court of Appeal. We had heard both parties during oral submissions and we had unanimously allowed the appeal. We now proffer the reasons for our decision.

The Appeal

[9] The plaintiff, in his memorandum of appeal complained as follows:

> Hakim Mahkamah Tinggi yang bijaksana telah khilaf di sisi undang-undang dan fakta apabila:
>
> 1. Menyatakan bahawa Perjanjian Usahasama (JOINT VENTURE AGREEMENT) yang ditandatangani di antara Plaintif dan Defendan adalah tidak sah.
>
> 2. Menyatakan bahawa Defendan tidak mempunyai kapasiti sebagai persendirian untuk menandatangani Perjanjian Usahasama tersebut.

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3. Menyatakan bahawa Plaintif telah gagal membuktikan bahawa terdapat satu persetujuan lisan di antara Plaintif dan Defendan.

4. Menyatakan bahawa Defendan adalah bukan merupakan Pemegang Amanah bagi lot-lot tersebut bagi pihak Plaintiff

5. Telah gagal untuk mengambil kira kandungan perintah Mahkamah
B bertarikh 22.8.2007 dengan tepat.

6. Telah gagal untuk mematuhi perintah 22.8.2007

7. Mencabar dan/atau mengabai perintah 22.8.2007.

8. Merujuk kepada kandungan yang terdapat di permohonan untuk
C Surat Kuasa Pentadbiran Harta Pusaka.

9. Mengambil kira kandungan yang terdapat di permohonan untuk Surat Kuasa Pentadbiran Harta Pusaka kerana itu adalah di luar bidang kuasa Hakim.

10. Tidak mengambil kira isu "Doctrine of Estoppel" yang dibangkitkan
D oleh Perayu/Plaintiff

11. Menyatakan bahawa tuntutan Perayu adalah tidak selaras dan tidak memenuhi peruntukan di bawah Akta Relief Spesifik 1950.

12. Menyatakan bahawa tuntutan Perayu tidak dapat memenuhi
E peruntukan untuk diberi penghakiman untuk perlaksanaan spesifik kerana perkara ini tidak dinyatakan di dalam perjanjian usahasama.

13. Menyatakan bahawa perlaksanaan spesifik untuk perjanjian Usahasama tersebut tidak boleh dikuatkuasakan kerana balasan yang akan diterima oleh pihak Defendan adalah tidak mencukupi.

F 14. Menyatakan bahawa tuntutan Perayu telah gagal berdasarkan seksyen 20 dan seksyen 27 Akta Relief Spesifik 1950

15. Berpegang bahawa perayu telah gagal memplidkan tuntutannya dengan jelas bagi perlaksanaan spesifik untuk meneruskan perjanjian atau berdasarkan kemungkiran yang telah dilakukan oleh Defendan
G kerana Perayu dengan secara jelasnya memplidkan bahawa tuntutanya bagi satu Deklarasi atau secara alternatif untuk ganti rugi.

16. Menyatakan bahawa tiada keterangan yang menunjukkan bahawa semua waris-waris kepada estet si mati telah memberi persetujuan kepada Defendan untuk memasuki Perjanjian Usahasama tersebut
H dengan Perayu.

17. Menyatakan hanya mengawadkan RM48,118.53 sebagai Ganti rugi dan RM100,000.00 sebagai wang pampasan.

18. Mengawadkan RM100,000.00 sebagai wang pampasan di mana
I jumlah RM100,000.00 adalah terlalu kurang berbanding dengan tuntutan Perayu sebanyak RM926,215.00.

19. Dalam semua keadaan kes di dalam menolak tuntutan Perayu terhadap Responden.

[10] As could be seen from the above paragraph, there were numerous grounds enumerated in the memorandum of appeal by the plaintiff. However, during the course of this appeal, the main issue that was ventilated by both parties was centred on the question of whether the joint venture agreement dated 3 January 2006 was valid and therefore binding on the parties. Central on this issue was the defendant's assertion that he had no legal capacity to enter into that agreement. Such assertion by the defendant was premised on fact that the property in Lot 1971 was still in his mother's name – Rokiah bte Karia ie, the deceased. Quite related to this issue was that the defendant did not get the consent of the other beneficiaries of the deceased's estate before the defendant entered into an agreement to deal with the estate of the deceased. Upon due perusal of the notes of proceedings in the trial court, it was clear that in his cross-examination, the defendant had answered to a question posed to him that the other beneficiaries had agreed to him entering into the said joint venture agreement, especially with regard to Lot 1971. We reproduce the recording *verbatim*, like so:

Q : Saya ulang sekali lagi. Semua waris si mati telah bersetuju untuk mengagihkan Lot 1971 kepada Encik Samsuri.

A : Ya

Q : Tolong rujuk JV m/s 1, 2 dan 3. Apakah dokumen ini?

A : Perjanjian Usahasama.

Q : Di bawah perjanjian, apakah lot yang disebut?

A : Lot 1971 PM 193 Mukim Labu.

[See pages 56-57 of Rekod Rayuan Tambahan].

[11] It was also borne out from the cross-examination of the defendant whereby he had agreed "untuk memindah milik 50% keseluruhan tanah tersebut kepada En Anuar". It was also the testimony of the other beneficiaries to the estate of Rokiah bte Karia that Lot 1971 was earmarked for distribution to the defendant.

[12] It was therefore borne by the evidence that the defendant was indeed competent to enter into the joint venture agreement with the plaintiff in dealing with Lot 1971. Lot 1971 was earmarked for distribution to him from the estate of Rokiah bte Karia. In actual fact, Lot 1971 was subsequently distributed to the defendant as can be seen in his own evidence during cross-examination by learned counsel for the plaintiff at p. 59 of the RRT, like so:

Q : Rujuk m/s 155. Ini adalah satu perintah pembahagian di mana lot 1971 diagihkan atau diserahkan kepada En. Samsuri. Betul?

A : "Ya".

[13] From the overall appreciation of the evidence led by both litigating parties, it was our view that at the lowest, the defendant was at the material time of signing of the joint venture agreement, the administrator of the deceased's estate. We surmised, that fact was not disputed by the defendant at all. The crux of the defendant's contention was that the ownership of the properties of the deceased, including Lot 1971 had not yet been finalised during the material time and as such, the defendant was not properly and legally clothed to deal with the property the way he did. Premised on that, the defendant had contended that the joint venture agreement was not valid and therefore not binding on him, for want of capacity to contract.

[14] We had considered the submissions on the legal position that ought to obtain in a case such as this. With respect, we agreed with the plaintiff's learned counsel's submission that the defendant was competent to enter into an agreement such as the joint venture agreement. In the case of *Silimuthu v. Amalu & Anor* [1981] 1 MLRH 509 ("*Silimuthu* case") learned Justice Rashid J had said at p. 510 of the report, as follows:

> It is plain that the Defendants relied on their position as bare beneficiaries when they entered into the said agreement to avoid their obligations. Had the plaintiff applied for the specific performance for the transfer of the said land to him I would have to consider whether or not the agreement was binding on the estate. Such deliberation, under the circumstances, may be deferred since it is not an issue in the instant action. I need only consider the question whether the Defendants were legally bound to discharge their obligations under agreement to apply for Letters of Administration and thereafter to apply for permission of the court to sell the said land to the plaintiff.

[15] At this juncture, we can see some parallel with our instant case with regards to the factual matrix thus far. But what the learned Justice went on to say hit the nail on its head. His Lordship had said:

> To my mind, I have no doubt at all that the Defendants were legally competent to enter into agreement in the terms as stated above. I do not agree that the agreement was void *ab initio*. There is no proposition of law, to my knowledge, which prohibits beneficiaries of an estate of a deceased person from entering into an agreement of this nature. Instead there are authorities which point to the fact that beneficiaries are competent to enter into such agreement even before Letters of Administration had been granted to them.

[16] It would be apt for us to advert to the final order that was made by the learned Justice Rashid J in the *Silimuthu* case (*supra*) like so:

> In my judgment the agreement entered into by the Defendants with the plaintiff on July 20, 1980 was valid and the plaintiff was entitled to the court order requiring the Defendants to apply for the Letters of Administration and subsequently to apply for permission of the court to sell the land to the plaintiff in accordance with the said agreement.

Accordingly, the Defendants were ordered to apply for Letters of Administration within one month of the date of this judgment and within one month of the grant of the Letters of Administration, duly extracted, the Defendants were required to apply for leave of the court to have the said land transferred to the plaintiff.

[17] See also the decision of Raja Azlan Shah J (as His Majesty then was) in the case of *Kersah La'uisn v. Sikin Menan* [1964] 1 LNS 57; [1964] 1 MLRH 528; [1966] 2 MLJ 20.

[18] In gist, the defendants in *Silimuthu* case (*supra*) were competent to enter into the agreement with the plaintiff, although they were merely beneficiaries, "even before letters of administration had been granted to them". As such, they were ordered to discharge their obligations under the agreement to apply for the letters of administration as stipulated in the terms of the said agreement.

[19] So, how did the defendant in our instant appeal, stack up *vis-à-vis* the defendants in the *Silimuthu* case (*supra*)? In our present case, the defendant was the legal administrator of the deceased's estate of which Lot 1971 was one of the lands comprised therein. That he was a beneficiary to the estate of Rokiah bte Karia was beyond any doubt. Indeed, Lot 1971 was subsequently distributed to him, as evidenced by his answer to that effect at p. 59 of the supplementary record of appeal during cross-examination by learned counsel for the plaintiff, like so: "Q: Rujuk ms. 155. Ini adalah satu perintah pembahagian d mana lot 1971 diagihkan atau diserahkan kepada En Samsuri. Betul?" A: "Ya".

[20] As the legal representative of the said estate, the defendant was competent to enter into the joint venture agreement with the plaintiff and was bound by the terms contained in the said joint venture agreement. On top of that he had the consent of the other beneficiaries. Clearly, the plaintiff had made out the prayer as contained in cl. 13(iv) of his statement of claim. The prayer in cl. 13(iv) of the statement of claim was not a prayer for specific performance. As such, the prerequisites on pleadings peculiar to such a prayer, as contained in the decision in the case of *Ganam Rajamany v. Somoo Sinniah* [1984] 2 CLJ 268; [1984] 1 CLJ (Rep) 123 did not, with respect, apply to the prayer as contained in cl. 13(iv) abovestated, which essentially was a prayer for an order that the defendant as the administrator of the estate of the deceased to transfer the said ten lots to the plaintiff. In this case, there was no prayer set out in the statement of claim of the plaintiff seeking for the relief of specific performance. There is a distinction between these two kinds of prayers as could be discerned in the judgment of Rashid J in the *Silimuthu* case (*supra*) at p. 510.

[21] On that note, we will now address on the issue pertaining to the specific performance as was raised by the defendant. That issue was concerned with the finding by the learned HCJ that the action brought by the plaintiff was based on a prayer for specific performance of the joint venture agreement. It was her finding that since the plaintiff did not plead that he was ready and willing to continue with the agreement, such failure to so plead was fatal *per se* and that on that ground alone, the claim by the plaintiff must fail.

[22] Now, we had perused through the statement of claim as well as the reply. We could not detect any express prayer for specific performance in the plaintiff's pleadings. So what were the prayers in the statement of claim? The answer could be found in cl. 13 therein. It sought for a declaration that the defendant was a trustee for the plaintiff in relation to the ten lots as enumerated therein that had been subdivided from the Lot 1971. It also sought for a declaration that the defendant as administrator of the estate of the deceased be ordered to transfer the said ten lots into the name of the plaintiff within three months of the date of the order granted by the court. Then there were prayers in the alternative, and a prayer for interest at 8% pa from date of judgment till full payment. It ended with an omnibus prayer for any order deemed fit and just in the circumstances by the court.

[23] So, it was clear that the learned HCJ had misread the statement of claim thereby misdirecting herself as to the true nature of the prayers that were being sought for by the plaintiff. She had dismissed the plaintiff's claim based on a mistaken appreciation of the pleadings and prayers of the plaintiff. She had ruled on a prayer, *to wit*, specific performance, a prayer that was alien to the plaintiff's statement of claim. On that ground alone, being a serious misdirection, her decision was liable to be set aside.

[24] As such, the joint venture agreement was valid and was binding on the contracting parties. That joint venture agreement contained certain terms that would require the defendant to do certain things in favour of the plaintiff. Among them has been a term that obligated the defendant to transfer ten titles of the newly subdivided Lot 1971 to the plaintiff. In fact, there was no dispute on this term *per se*. But by disputing the capacity of the defendant to enter into the joint venture agreement with the plaintiff, it was clear to see that if such contention was accepted by the court, as it was accepted by the trial judge, the obligation on the defendant to so transfer the ten lots to the plaintiff would then disappear into thin air just like that. It is also clearly provided under s. 38 of the Contracts Act 1950 that a party to a contract must, unless excused under the Contracts Act or any other law, be bound by the terms of the contract so entered between them.

[25] From the evidence adduced in court before the learned trial judge, it was admitted by the defendant during cross-examination by counsel for the plaintiff that the plaintiff had indeed performed his part of the bargain as contained in the joint venture agreement and that the defendant had benefited from the efforts undertaken by the plaintiff on behalf of the defendant. We reproduce here the relevant portion of the defendant's evidence during cross-examination:

Q : Jadi encik telah bersetuju untuk memindah milik 50% keseluruhan tanah tersebut kepada En. Anuar. Betul?

A : Betul.

Q : Bila kena buat?

A : Satu bulan selepas geran tersebut dipindah milik.

Q : Adakah En. Samsuri telah pindah milik kepada En. Anuar?

A : Tidak.

(Refer to p. 57 of supplementary record of appeal)

[26] At p. 61 of the supplementary record of appeal, the defendant testified that:

Q : Bayaran ini semua dibuat oleh En Anuar. Betul?

A : Betul.

Q : Selepas semua bayaran dibuat, adakah Pej Tanah mengeluarkan hak milik berasingan?

A : Ada.

Q : Berapa hak milik berasingan?

A : 17.

Q : Setujukah En Anuar telah menyelesaikan semua kerja- kerja urusan tanah lot 1971?

A : Setuju.

Q : Selepas En Anuar menyelesaikan semua kerja- kerja berkenaan dengan JV dan lot 1971, En. Samsuri gagal membayar 50% seperti dipersetujui. Betul?

A : Betul.

[27] In light of those admitted facts, we agreed with learned counsel for the plaintiff that the defendant was estopped from denying the plaintiff what had been agreed between them. The doctrine of estoppel operated against him. The doctrine of estoppel also operated against him such that he could not be heard now to say that he had no capacity/authority to enter into the

joint venture agreement. A short revisit to the decision by Raja Azlan J (as His Majesty then was) in the case of *Cheng Keng Hong v. Government of the Federation of Malaya* [1965] 1 LNS 22 will illustrate the point in issue, where the learned judge had said:

> Although Mr Hewish had no authority to sign the letter for the Chief Architect, the respondents had by their conduct represented or permitted to be represented to the applicant that Mr Hewish had the authority to act on their behalf and consequently the respondents were bound by their acts to the same extent as if he had the authority therefore in the circumstances the respondents were estopped from disputing the authority of Mr Hewish.

[28] In the overall scheme of things, it did not come as a surprise to us that the plaintiff had described the defence of the defendant as an afterthought; devised as it were, to deny him what was rightfully his, as had been agreed between them as contained in the joint venture agreement.

[29] So, at the end of the day, the learned trial judge had given the plaintiff damages for work actually done as admitted by the defendant. She had also given compensation in the sum of RM100,000 to the defendant and costs. We were of the considered view that her decision could not be sustained in view of the evidence before her.

[30] In the upshot, having perused the records of appeal and the submissions both oral and written by both learned counsels, we were of the considered view that the learned HCJ had erred in her decision. It therefore required our intervention in order that justice was served in the circumstances of this case. We set aside her orders and we granted prayer 13(iv) only in the statement of claim. We also ordered costs of RM10,000 to be paid to the plaintiff by the defendant and that the deposit be refunded to the plaintiff.